defrauded party should bar equitable relief. It has been said that equity will not grant relief as a reward for negligence. See *Ft. D. B. & L. Ass'n* v. *Scott* (1892) 86 Iowa 431, 434, 53 N. W. 283. But where, as in the instant case, the intervening incumbrancer would be in exactly the same position if subrogation were granted that he was in originally, there would seem to be no good reason for denying it. See *Kent* v. *Bailey* (1917) 181 Iowa 489, 500, 164 N. W. 852; *Hill* v. *Ritchie* (1916) 90 Vt. 318, 322, 98 Atl. 497; but see *Rice* v. *Winters* (1895) 45 Neb. 517, 530, 63 N. W. 830. To do so would be to allow the intervening incumbrancer to profit by the fraud of the debtor, which seems essentially inequitable. Hence many courts hold that the mere failure to examine records, although negligence, is not fatal to the plaintiff's cause. *Kent* v. *Bailey, supra; Hill* v. *Ritchie, supra.* Where the plaintiff is guilty of negligence whereby the intervening incumbrancers are actually prejudiced, however, equity will not invoke the doctrine of subrogation. *Wilkins* v. *Gibson* (1901) 113 Ga. 31, 38 S. E. 374. In the light of these considerations, the conclusion reached by the instant case seems unsound.

TORTS—NEGLIGENCE—DUTY OF LANDOWNER TO FIREMAN ENTERING PREMISES.—The plaintiff, a fireman, in answering an alarm sent in by the defendant's servant, fell into a coal hole negligently left open in a driveway on the defendant's premises. The plaintiff sues to recover for his injuries. *Held,* three judges dissenting, for the plaintiff. *Meiers* v. *Fred Koch Brewery* (N. Y. 1920) 127 N. E. 491.

By the weight of authority a fireman is a mere licensee to whom a landowner is liable only for affirmative negligence. *Woodruff* v. *Bowen* (1893) 136 Ind. 431, 34 N. E. 1113; *Gibson* v. *Leonard* (1892) 143 Ill. 182, 32 N. E. 182. The lower courts of New York have also taken this view. *Eckes* v. *Stetler* (1904) 98 App. Div. 76, 90 N. Y. Supp. 473. Some courts have concluded that a fireman is a licensee, because he is said to be "licensed by law" to enter on premises in pursuit of his duty. See Cooley, Torts (3rd ed., 1906) 648. But a license implies consent and acceptance whereas a fireman is in duty bound to enter even if the landowner orders him to stay off. See Cooley, *op. cit.,* 648. The Massachusetts Court has given to a policeman who enters at an occupant's request the status of an invitee. *Learoyd* v. *Godfrey* (1885) 138 Mass. 315. This view also seems unsound. The privilege of a fireman or policeman depends on public duty and not on any express or implied invitation. See *Lunt* v. *Post Printing Co.* (1910) 48 Colo. 316, 324, 110 Pac. 203. Furthermore an invitation will only be implied where one comes on land for a purpose connected with the business of the landowner or with a business which he permits to be carried on there. *Plummer* v. *Dill* (1892) 156 Mass. 426, 31 N. E. 128. But a fireman may or may not enter on premises for a purpose connected with the owner's business. *Cf. Low* v. *Grand Trunk Ry.* (1881) 72 Me. 313. It is submitted that firemen and policemen are neither licensees nor invitees; they safeguard the property and life of the community and as a matter of public policy should be given every protection possible. On that ground the courts should place property holders under a duty to use due care toward them.

TRIAL BY JURY—LONG ACCOUNT—EXAMINATION OF PARTY BEFORE TRIAL.—In an action for goods sold and delivered involving a long account, the Federal District Court for the Southern District of New York,

with a view to simplifying the issues for the jury, appointed an auditor to examine 700 items set forth in the schedules filed by the parties and to express an opinion as to the amount due to the plaintiff. The plaintiff filed a petition for a writ of mandamus, prohibition or both, praying that the District Court and the auditor be restrained from proceeding under the order appointing him. *Held,* Mr. Justice McKenna, Mr. Justice Pitney and Mr. Justice McReynolds dissenting, petition denied. *In re Peterson* (1920) 40 Sup. Ct. 543.

Ordinarily federal practice must conform to the practice of the courts of the state in which the federal court is sitting. (1872) 17 Stat. 197, U. S. Comp. Stat. (1916) § 1537. Nevertheless, though the state in which it is sitting may do so, a federal court has no power to refer an action at law involving a long account to an auditor to hear and determine all the issues without the consent of the parties, as such a reference would deprive them of their constitutional rights to a trial by jury. *The Howe Machine Co.* v. *Edwards* (C. C. 1878) 15 Blatchf. 402; see *United States* v. *Wells* (D.C. 1913) 203 Fed. 146, 149. But where the auditor's report is not conclusive, but merely *prima facie* evidence, as in the instant case, these rights are not invaded, for only procedure is affected. *Fenno* v. *Primrose* (C. C. A. 1903) 119 Fed. 801; *Holmes* v. *Hunt* (1877) 122 Mass. 505; *contra, Francis* v. *Baker* (1874) 11 R. I. 103. At first thought, such a preliminary hearing seems to involve the examination of a party before trial, which a federal court cannot require even though a statute of the state where the federal court is sitting permits such examination, for the reason that it is not given discretion to take depositions not authorized by federal statute. *Hanks Dental Ass'n.* v. *International Tooth Crown Co.* (1904) 194 U. S. 303, 24 Sup. Ct. 700. However, the Hanks case can be distinguished from the instant case on the ground that the examination of a party before trial is in conflict with a federal statute (1827) 4 Stat. 199, U. S. Comp. Stat. (1916) § 1468; *Ex parte Fisk* (1885) 113 U. S. 713, 5 Sup. Ct. 724, while the appointment of an auditor in aid of jury trials has not been made the subject of Congressional legislation. Furthermore, the depositions in the Hanks case were received as evidence, while in the instant case only the report of the auditor was so received. And so the conclusion of the court in the instant case that, although unauthorized by statute, it has inherent power to compel the reference of an action at law involving a long account to an auditor, seems sound, particularly in view of the fact that such practice would seem to be prerequisite to the intelligent consideration of the case by a jury, the function of the auditor being the same as that of pleading in so far as his task is to define and simplify the issues.

UNFAIR COMPETITION—FEDERAL TRADE COMMISSION—PLEADING.—The petitioners sought to set aside an order of the Federal Trade Commission requiring them to desist from refusing to sell cotton ties and bagging except in conjunction with each other. The ties and bagging were manufactured by two corporations, each practically a local monopoly of which the plaintiffs were sole agents. The complaint before the Commission had merely set forth the practice of the petitioners without alleging the monopoly which made the practice unlawful. In the proceeding, however, full evidence was offered as to these additional circumstances. *Held,* Justices Brandeis and Clark dissenting, since the complaint before the Commission was insufficient to state a cause of action, the order based thereon will be set aside. *Federal Trade Commission* v. *Gratz et al.* (1920) 40 Sup. Ct. 572.